Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
	)	
Exclusive Service Contracts for Provision of	)	MB Docket No. 07-51
Video Service In Multiple Dwelling Units	)	
and Other Real Estate Developments	)	

To: The Commission

EX PARTE COMMENTS OF
CONSUMER FEDERATION OF AMERICA,
CONSUMERS UNION, NEW AMERICA FOUNDATION,
FREE PRESS, PUBLIC KNOWLEDGE,
AND U.S. PIRG

Media Access Project, on behalf the above captioned organizations (collectively "CFA, *et al.*"), hereby files these *Ex Parte* Comments with regard to the above captioned proceeding.

ARGUMENT

The Commission has a long history of promoting competition by giving consumers a choice of provider for video, voice and data services. After the Commission created expanded the over the air reception device (OTARD) rules to include rights for renters, and apply to two-way wireless telecommunications services, the Commission faced similar objections from landlords that the public interest should yield to the private interests of landlords wishing to extract value from their "ownership" of tenants by forcing them to accept exclusive providers. *See*

generally In re Continental Airlines, Petition for Declaratory Ruling Regarding the Over the Air Reception Device (OTARD) Rules, 21 FCCRcd 13201 (2006). The FCC rejected these arguments, finding that the nation's interest in a vibrant and competitive market in video, voice and data outweighed the general right of landlords and service providers to enter into exclusive contracts. The Commission should make a similar determination here and reject exclusive contracts for video services, voice services, or data services.

NATOA and others raise legitimate concerns that exclusive contracts may, under some circumstances, serve the interests of competition. While CFA, *et al.*, recognize that such cases may exist, nothing in the record demonstrates that they are so widespread that the millions of consumers in multiple dwelling units (MDUs) should be denied their choice of provider for the sake of these relatively few instances where exclusivity promotes competition. Indeed, it does not appear from the record that a right to an exclusive development contract provides a valuable springboard for an overbuilder or new entrant to mount an effective challenge to incumbents in more developed areas. Nor does anything prevent incumbents from bidding even for these "green field" developments and expanding their market dominance.

Finally, it does not appear that permitting such "exclusives" necessarily extends the benefits of competition to the residents of these developments, even when they are serviced by an overbuilder or other new entrant. It seems equally

likely that a provider with an "exclusive," even if not generally an incumbent, has the same lack of incentive to lower prices or improve service quality, since the exclusive arrangement between the landlord and the provider ensures that customers cannot change in response to poor service or higher prices.

Nevertheless, the Commission may wish to exempt exclusive contracts between landlords and overbuilders or other new entrants. Arguably, this would provide an incentive for landlords to contract with new entrants, helping promote new entrants more broadly. Even here, however, the Commission would do well to weigh this incentive against the danger of creating a class of "stranded" customer subject to a single provider, and should shape such an exception narrowly to serve the purpose of encouraging competition overall. For example, such an exemption should not be transferrable in the event the new entrant sells its systems to an incumbent.

In any event, as indicated in the record, the vast majority of cases involve incumbent video providers and incumbent telephone providers. Neither should be allowed to collude with landlords to deprive citizens of the benefits of competition, simply because these citizens live in rental housing or in a housing association. Certainly where a telephone provider and a cable operator both have wires into the home, it makes no sense to allow one to exclude the other from providing a service solely on the basis of a contract with a landlord. Such a provision cannot even be justified on the grounds that landlords must control reasonable access to their

premises. Thus, if Verizon can provide voice and data via a FIOS line, it should be able to offer video service as well. Similarly, if Comcast already provides video and data to a building, it should be allowed to market its VOIP package directly to residents. Any other rule frustrates the competition that both Congress and the Commission have sought to facilitate as a matter of national policy.

As a final point, CFA, *et al.*, stress that the policy of access must apply equally to all competitive providers of voice, video and data. Whether it is CLECs competing with ILECs, ILECs competing with cable operators, or overbuilders competing with both, the Commission should apply the policy of access to MDUs with an equal and impartial hand. While CFA, *et al.*, support a policy the encourages competition, CFA, *et al.*, has no wish to see one industry favored over another. If the Commission intends to provide renters and other residents previously denied access to competition with new opportunities, it must do so for all services, not merely video.

CONCLUSION

For better or worse, since passage of the 1996 Act, Congress and the Commission have relied on market forces rather than regulation to provide "to all people of the United States...a rapid, efficient, Nation-wide, and world-wide wire and radio communications service." 47 U.S.C. §151. For too long, residents of rental housing, condominium owners, and home owners in housing associations have been denied even the protection of competition, and potential competitors have been

foreclosed from valuable markets. Although the Commission may take precautions to protect the rare cases where exclusivity serves the public interest, it should prohibit exclusivity for video, voice and data services in the vast majority of cases where such exclusivity cannot possibly serve the public interest.

Respectfully Submitted,

_____/s/_____

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October 24, 2007